Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

MADISON COUNTY FISCAL COURT, RON DEVERE, JUDGE EXECUTIVE GEORGE ROBBINS, LARRY COMBS, FORNIS BARK, FARRIS PARKS, and PEGGY RICE, individually and in their official capacities,

Petitioners,

versus

CHRISTOPHER HORN, by his Limited Conservator, GARY R. PARKS,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

C. THOMAS HECTUS
Counsel of Record

WILLIAMS & WAGONER
R. THADDEUS KEAL
One Oxmoor Place
101 Bullitt Lane, Suite 202
Louisville, KY 40222
(502) 429-5700

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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QUESTION PRESENTED

1. Whether a private plaintiff may state a cause of action under 42 U.S.C. § 1983 for the deprivation of rights secured by the Juvenile Justice and Delinquency Prevention Act?

SUP. CT. R. 14.01(b) LIST OF PARTIES

The Madison County (Kentucky) Fiscal Court, the Madison County Judge Executive George Robbins, Magistrates Larry Combs, Fornis Bark, Farris Parks, and Peggy Rice, and Madison County Jailer, Ron Devere, all individually and in their official capacities, were defendants in the District Court. The Plaintiff was Christopher Horn, a minor, by his limited conservator, Gary R. Parks.

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MADISON COUNTY FISCAL COURT, RON DEVERE, JUDGE EXECUTIVE GEORGE ROBBINS, LARRY COMBS, FORNIS BARK, FARRIS PARKS, and PEGGY RICE, individually and in their official capacities,

Petitioners,

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CHRISTOPHER HORN, by his Limited Conservator, GARY R. PARKS,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioners, Madison County Fiscal Court, Ron Devere, County Judge Executive George Robbins, Magistrates Larry Combs, Fornis Bark, Farris Parks, and Peggy Rice, individually and in their official capacities, respectfully pray that a writ of certiorari issue to review the Opinion of the United States Court of Appeals for the Sixth Circuit, decided and filed on April 21, 1994.

OPINION BELOW

The Opinion of the United States Court of Appeals for the Sixth Circuit was entered on April 21, 1994, and was recommended for full text publication pursuant to Sixth Circuit Rule 24. The Opinion of the Court of Appeals is reprinted in the Appendix hereto, pages 1-19, infra.

JURISDICTION

The Opinion of the United States Court of Appeals for the Sixth Circuit was entered on April 21, 1994, affirming the judgment entered upon the jury verdict in the District Court. See Appendix pp. 1-19, infra. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Christopher Horn, a juvenile, brought this action in the U.S. District Court for the Eastern District of Kentucky by his Limited Conservator, pursuant to 42 U.S.C. § 1983. Horn sought damages for alleged violations of his federally secured rights under the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. §§ 5601-5780 (hereinafter the "JJDPA").

In May, 1990, Horn, then age 17, pleaded guilty to a robbery charge in the Madison County District Court, juvenile session. He was committed to the Commonwealth of Kentucky's Cabinet for Human Resources, and released to the custody of his parents pending placement

with the Cabinet. After the Court was advised that Horn had violated the conditions of his release, the Juvenile Court issued a "pickup order." Subsequently, Horn turned himself in to his Court-designated worker, and was transported to the Madison County Detention Center, pursuant to the Juvenile Judge's Order.

The Madison County Detention Center is an adult jail, which had been designated by the Commonwealth of Kentucky as an "intermittent juvenile holding facility."[1] Juvenile offenders can be lodged in adult jails which are designated as intermittent juvenile holding facilities for a period not to exceed 24 hours, as long as they are sight-and-sound separated from adults.

Horn was received at the detention center at approximately 1:40 p.m. on May 31, 1990. Pursuant to state law (and coincidentally, the requirements of the JJDPA), Horn was separated by sight-and-sound from adult offenders from the time he physically entered the jail. After being booked, Horn was escorted to a juvenile holding cell. Approximately 35 minutes after being placed in his cell, Horn was discovered hanging from the bunk of his cell with a bed sheet tied around his neck. Horn was not breathing, but after being taken down, he was revived by cardiopulmonary resuscitation. However, as a result of oxygen deprivation, Horn suffered brain damage and permanent paralysis.

Prior to trial, the District Court dismissed Horn's claims based upon the JJDPA, finding that the act was not enforceable by private cause of action under 42 U.S.C. § 1983.

---

[1] 501 KAR 9:010, et seq.

At trial, at the conclusion of all the evidence, the District Court dismissed all remaining claims against the Madison County Fiscal Court, Judge Executive George Robbins, and the individual Magistrates. However, the Court instructed the jury under Horn's pendent state claims of negligence as against the Jailer individually. The jury returned a verdict in favor of the Jailer.

On appeal, the Sixth Circuit Court of Appeals determined that the requirements of the JJDPA were intended to benefit persons such as Horn, that the JJDPA did not reflect merely a congressional preference rather than a binding obligation, and that its requirements were neither so vague nor amorphous as to be beyond the competence of the judiciary to enforce. Accordingly, the Sixth Circuit found that the JJDPA created a private right of action under § 1983. Nonetheless, the Court affirmed the Judgment, finding that the District Court's dismissal of the claim was harmless error, because Horn had presented nothing more than a hypothetical argument, unsupported by evidence, that his injury would not have occurred but for alleged violations of the JJDPA.

REASON FOR GRANTING THE WRIT

I. 42 U.S.C. § 1983 Does Not Provide A Cause Of Action For Individual Juveniles Alleging Violations Of The Juvenile Justice And Delinquency Prevention Act Because The Statute Does Not Create Enforceable Rights, Privileges Or Immunities. Further, Congress Has Foreclosed Such Enforcement In The Enactment Itself.

The Sixth Circuit's opinion below is the first time a federal court of appeals has found that the JJDPA gives rise to a private cause of action. In *Horn*, the Sixth Circuit reached a contrary result to the only other published opinion in the Sixth Circuit addressing whether the JJDPA gives rise to a private cause of action. In *Doe v. McFaul*, 599 F.Supp. 1421 (E.D. Ohio 1984), the District Court had found that the Act's purpose and history did not support an implied right of action under the test of *Cort v. Ash*, 422 U.S. 66 (1975), or under § 1983. The Sixth Circuit found that because *Doe v. McFaul* was decided prior to this Court's opinions in *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418 (1987), *Wilder v. Virginia Hospital Association*, 496 U.S. 498 (1990), and *Suter v. Artist M.*, ___ U.S. ___, 112 S.Ct. 1360 (1992), it was thus not persuasive.

Although the Sixth Circuit found that the District Court's alleged error in dismissing Horn's JJDPA claims was harmless, it is nonetheless important for this Court to review the determination by the Sixth Circuit that the JJDPA gives rise to a private cause of action. Kentucky, like most other states, was a signatory to the JJDPA. However, the Commonwealth of Kentucky recently advised the Office of Juvenile Justice and Delinquency

Prevention (OJJDP) of its intention to withdraw from the Act. Without question, there could be no claims subject to enforcement under § 1983 for alleged violations of the JJDPA unless the state were a signatory to the Act. Nonetheless, in states such as Kentucky where the statute of limitations is tolled during minority, KRS 413.170, numerous Kentucky counties, as well as agents and employees of the Commonwealth, will remain subject to claims asserted for alleged violations of the JJDPA as long as the Sixth Circuit's Opinion remains unchallenged.[2] By way of example, a 14-year old who might claim his rights were violated under the JJDPA in 1993 would have until some time in 1998 to file his Complaint.

Petitioners submit that the trial court correctly found that Horn lacked standing under the JJDPA. In order to resolve the standing issue, this Court must consider the relevant sections of the JJDPA under Title 42 of the United States Code:

> **§ 5602. Congressional Declaration of Purpose and Policy**
>
> (a) It is the purpose of this Act –

---

[2] Additionally, two class actions, one in the Eastern District of Kentucky and one in the Western District, are currently litigating the rights of juveniles under the JJDPA. Both District Courts have certified the cases as class actions, and both District Courts, in unpublished Opinions, have refused to dismiss the plaintiff class claims, finding that the JJDPA *does* give rise to a private cause of action. *Doe v. Knauf, et al.*, No. 91-187 (E.D. Ky., August 24, 1992), and *James v. Wilkinson, et al.*, No. 89-139 (W.D. Ky., May 20, 1991).

* * *

(8) to assist State and local governments in removing juveniles from jails and lockups for adults.

§ 5611. Establishment of Office

(a) There is hereby established an Office of Juvenile Justice and Delinquency Prevention (hereinafter in this division referred to as the "Office") within the Department of Justice under the general authority of the Attorney General.

§ 5633. State Plans

(a) Requirements. In order to receive formula grants under this part [42 U.S.C. §§ 5631 et seq.], a State shall submit a plan for carrying out its purposes applicable to a 3-year period. Such plan shall be amended annually to include new programs, and the State shall submit annual performance reports to the Administrator which shall describe progress in implementing programs contained in the original plan, and shall describe the status of compliance with State plan requirements. In accordance with regulations which the Administrator shall prescribe, such plan shall –

(12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offense which do constitute violations of valid court orders, or such nonoffenders as dependent or neglected children, shall not be placed in secure detention facilities or secure

correctional facilities; and (B) provide that the State shall submit annual reports to the Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 103(1) [42 U.S.C.S. § 5603(1)];

(13) provide that *juveniles alleged to be or found to be delinquent* and youths within the purview of paragraph (12) *shall not be detained or confined in any institution in which they have regular contact with adult persons* incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges.

(14) provide that, beginning after the 5-year period following the date of the enactment of the Juvenile Justice Amendments of 1980 [enacted December 8, 1980], no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall promulgate regulations which (A) recognize the special needs of areas characterized by low population density with respect to the detention of juveniles; and (B) *shall permit the temporary detention in such adult facilities of juveniles accused of serious crimes against persons, subject to the provisions of paragraph (13),* where no existing acceptable alternative placement is available.

Further, the JJDPA provides that the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall enforce compliance with the requirements of the JJDPA:

> **§ 5533(c). Approval by Administrator; compliance with statutory requirements**
>
> . . . Failure to achieve compliance with the subsection (a)(12)(A) requirement within the three year time limitation shall terminate any State's eligibility for funding under this part [42 U.S.C.S. §§ 5631, et seq.] unless the Administrator determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 percentum of such juveniles or through removal of 100 percent of such juveniles from secure correctional facilities, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years. (2) Failure to achieve compliance with the requirements of subsection (a)(14) within the 5-year time limitation shall terminate any State's eligibility for funding under this part [42 U.S.C. §§ 5631, et seq.] unless the Administrator –
>
> (A) determines, in the discretion of the Administrator, that such State Law
>
> (i)(I) removed not less than 75 percent of juveniles from jails and lockups for adults; or
>
> (II) achieved substantial compliance with such subsection; and
>
> (ii) made, through appropriate executive or legislative action, an unequivocal commitment

> to achieving full compliance within a reasonable time, not to exceed 3 additional years; or . . .

Finally, the JJDPA unequivocally provides a remedy for non-compliance *only* to the Federal Administrator of the Office of Juvenile Justice and Delinquency Prevention:

> **§ 5611. Establishment of office**
>
> The Administrator is authorized to prescribe regulations consistent with this Act to award, administer, modify, extend, *terminate*, monitor, evaluate, reject, or deny all grants and contracts from, . . . funds made available under this title.

42 U.S.C. § 5611(b) (emphasis added).

Even David Richart, Plaintiff's "expert" witness on the requirements of the JJDPA, testified in his deposition that delinquent offenders can be confined in adult jails "[u]nder certain conditions and under several loopholes in the Juvenile Justice Act. . . . " [Deposition of David Richart, R. 96 at p. 6]. Richart admitted that the purpose of the statute was to "encourage" states to place children in separate facilities "[a]s opposed to mandate." [*Id*]. Richart conceded that while he might suggest the JJDPA mandates separation, "there have been recent interpretations by the United States Department of Justice that called that into question." [*Id.*, at pp. 6-7].

Like the plaintiffs in *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981), and *Suter v. Artist M*, 503 U.S. ___, 118 L.Ed.2d 1, 112 S.Ct. 1360 (1992), plaintiff herein failed to prove an express private right of action under the applicable federal statute. In *Pennhurst*, this Court determined that

there was no indication of Congressional intent to allow a private right of action, particularly where the statute had set forth a purpose "to assist" rather than to impose express obligations on the state enforceable through private rights of action. *Pennhurst, supra,* 67 L.Ed.2d at 708, 710. Significantly, the JJDPA, 42 U.S.C. § 5602(a) provides that "it is the purpose of this chapter . . . (8) ***to assist*** State and local governments in removing juveniles from jails and lock ups for adults."

Plaintiff's claims under the JJDPA differs little from the plaintiffs' claims in *Pennhurst.* As stated by this Court:

> In sum, nothing suggests that Congress intended the Act to be something other than a typical funding statute. Far from requiring the States to fund newly declared individual rights, the Act has a systematic focus, seeking to improve care to individuals by encouraging better state planning, coordination, and demonstration projects.

Pennhurst, 451 U.S. at 22, 67 L.Ed.2d at 710, 101 S.Ct. at ___.

* * *

This Court also noted that:

> Congress in recent years has enacted several laws designed to improve the way in which this Nation treats the mentally retarded. The Developmentally Disabled Assistance and Bill of Rights Act is one such law. It establishes a

> national policy to provide better care and treatment to the retarded and creates funding incentives to induce the States to do so. But the Act does no more than that.

Pennhurst, 451 U.S. at 31, 67 L.Ed.2d at 716, 101 S.Ct. at ___.

In *Wright v. Roanoke Redevelopment and Housing Authority*, 479 U.S. 418, 107 S.Ct. 766, 93 L.Ed.2d 781 (1987), this Court stated that:

> Whether a federal statute confers substantive rights is not an issue unique to § 1983 actions. In implied right of action cases, the Court also has asked, since *Cort v. Ash*, 422 U.S. 66, 78, 45 L.Ed.2d 26, 95 S.Ct. 2080 (1975), whether 'the statute create[s] a federal right in favor of the plaintiff.' In determining whether a statute creates enforceable rights, the 'key to the inquiry is the intent of the Legislature.' [citation omitted]. We have looked first to the statutory language, to determine whether it is 'phrased in terms of the persons benefited,' [citation omitted], and is cast in mandatory rather than precatory terms. [citation omitted]. We then have reviewed the legislative history of the statute and other traditional aids of statutory interpretation to determine congressional intent to create enforceable rights. [citation omitted].

Wright, 479 U.S. at 432-433, 93 L.Ed.2d at 794, 107 S.Ct. at ___. Importantly, the Court in *Suter* noted, "[s]ection 1983 speaks in terms of 'rights, privileges, or immunities,' not violations of federal law." *Suter*, ___ U.S. at ___, 118 L.Ed.2d at 12, 112 S.Ct. at ___ (citations omitted).

Congressional intent *not* to create a private right of action under the JJDPA is clear. Congress rejected attempts to provide express authority to maintain private suits in two proposed bills. See Senate Bill 520 and Senate Bill 522 from the first session of the 98th Congress (1983). Obviously, this Court cannot legislate where the Congress has not chosen to do so. Second, the "paltry sum" of the JJDPA grant of approximately $600,000 to the Commonwealth of Kentucky as a whole supports the statute's express intent to "assist" states in its goal to fulfill the policies of the JJDPA. The amount of money provided was considered by this Court in *Pennhurst*. "The fact that Congress granted to Pennsylvania only $1.6 million in 1976, a sum woefully inadequate to meet the enormous financial burden of providing 'appropriate' treatment in the 'least restrictive' setting, confirms that Congress must have had a limited purpose in enacting § 6010." *Pennhurst, supra*, 451 U.S. at 24, 67 L.Ed.2d at 711-712, 101 S.Ct. at ___. Third, this is not a funding statute in which monies go directly to recipients through state administration, but rather goes to the state itself. In fact, there was no evidence below that Madison County, Kentucky or its detention center received *any* funds under the JJDPA. Finally, there is no statutory mechanism by which these Defendants could have enforced the requirements of the JJDPA with respect to Chris Horn, for the most obvious reason that Horn was presented to the Detention Center under a valid Court Order, which if nothing else, is an exception to the prohibition against detaining status offenders in adult jails.

In the only published decision[3] arising from within the Sixth Circuit prior to Chris Horn's incarceration in the Madison County Jail, the United States District Court for the Eastern District of Ohio specifically found that the JJDPA did *not* confer a private cause of action under the JJDPA.

> The amended complaints also allege that the plaintiffs' incarceration violated the JJDPA's ban on incarcerating juveniles at adult facilities. 42 U.S.C. § 5633(12)(A). However, the statute does not provide an express private right of action, and its purpose and history do not give rise to an implied right of action under the test in *Cort v. Ash*, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975), or under § 1983 and § 1343(4). [cites omitted]. *Kentucky Assn. for Retarded Children v. Conn.*, 510 F. Supp. 1233, 1247 (W.D. Ky. 1980), *aff'd on other grounds*, 674 F.2d 582 (6th Cir., 1982), *cert denied*, 459 U.S. 1041, 103 S.Ct. 457, 74 L.Ed.2d 609 (1983) cited by plaintiffs for its sub silentio recognition of a private right of action, failed to address these requirements. Accordingly, all claims brought directly under the JJDPA must be dismissed.

Doe v. McFaul, 599 F.Supp. 1421, 1430 (E.D. Ohio, 1984).

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[3] Defendants do not agree that Plaintiff may rely upon Sixth Circuit Rule 24(c) in support of this citation to unpublished decisions of District Courts within the Sixth Circuit. Rule 24(c) specifically provides that counsel may cite an unpublished decision *only* where "an unpublished disposition has precedential value in relation to a material issue in a case and that there is no published opinion that would serve as well. . . . " Obviously, *Doe v. McFaul*, a published decision, squarely addressed this issue.

Likewise, the district court in *Cruz v. Collazo*, 84 F.R.D. 307, 313-14 (D.P.R. 1979), also found there was no private right of action under the JJDPA.

CONCLUSION

For the foregoing reasons, this Petition for Certiorari should be granted. If Petitioner is correct in urging that the United States Court of Appeals for the Sixth Circuit erred in finding that the JJDPA gave rise to a private cause of action under 42 U.S.C. § 1983, the Petitioners respectfully request this Court to vacate so much of the Opinion of the Court of Appeals which so holds, and to otherwise affirm the Judgment.

Respectfully submitted,

C. THOMAS HECTUS
Counsel of Record

WILLIAMS & WAGONER
R. THADDEUS KEAL
One Oxmoor Place
101 Bullitt Lane, Suite 202
Louisville, KY 40222
(502) 429-5700

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No. 92-6010

UNITED STATED COURT OF APPEALS

FOR THE SIXTH CIRCUIT

CHRISTOPHER HORN, by his Limited Conservator GARY R. PARKS, *Plaintiff-Appellant,* *v.* MADISON COUNTY FISCAL COURT, RON DEVERE, JUDGE EXECUTIVE GEORGE ROBBINS, LARRY COMBS, FORNIS BARK, FARRIS PARKS, and PEGGY RICE, Individually and in their Official Capacities, *Defendants-Appellees.*	ON APPEAL from the United States District Court for the Eastern District of Kentucky

---

Decided and Filed April 21, 1994

Before JONES and SUHRHEINRICH, Circuit Judges; and McKEAGUE, District Judge.*

McKEAGUE, District Judge. Appeal is taken from the judgment of the United States District Court for the Eastern District of Kentucky upon jury verdict finding that

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* The Honorable David W. McKeague, United States District Judge for the Western District of Michigan, sitting by designation.

defendant Ron Devere was not negligent in his treatment of plaintiff Christopher Horn, a juvenile. Plaintiff-appellant sustained injury when he attempted suicide while housed at the Madison County Detention Center. The district court, the Honorable Karl S. Forester, had earlier dismissed the plaintiff's claim under 42 U.S.C. § 1983, asserting rights under the Juvenile Justice and Delinquency Prevention Act of 1974 (hereinafter "Juvenile Justice Act" or simply "Act"). The district court had also directed a verdict in favor of the defendants on a second § 1983 claim, asserting rights under the Eighth Amendment. Plaintiff-Appellant asserts the district court erred (1) in ruling the Juvenile Justice Act is not enforceable through a private cause of action; (2) by directing a verdict on plaintiff's Eighth Amendment claim; (3) by prohibiting introduction of evidence of the Act's requirements in support of his Eighth Amendment claim; and (4) by denying him a directed verdict on his claim that incarceration of a juvenile in an adult facility is unconstitutional per se.

I.

On May 25, 1990, Christopher Horn, aged 17, pleaded guilty to a robbery charge in the Madison County District Court. He was committed to the Cabinet of Human Resources and released to the custody of his parents pending placement under the condition that he remain "within arm's reach of his parents." On May 30, 1990, Horn's parents reported that he had left home without permission and his whereabouts were unknown. Mrs. Horn signed a complaint and a "pick-up order" was issued by District Judge Julia Adams, charging violation

of conditional release. The next day, at approximately 1:00 p.m., Horn turned himself in at the office of his court designated worker, Mary Ann Haynes. Horn was then transported to the Madison County Detention Center by Deputy Sheriff Steve King pursuant to Judge Adams' order. Haynes accompanied them.

The Madison County Detention Center is an adult jail, newly opened in January 1990, and designated for use as an intermittent juvenile holding facility. That is, a juvenile offender could be lodged there under statutorily prescribed conditions for a period not to exceed 24 hours.

Horn was received at the detention center at approximately 1:40 p.m. on May 31, 1990. Haynes accompanied him during the juvenile intake procedure. She later testified at trial that he appeared to be coherent and in a good mood; not "high on paint" or under the influence of any other substance. She testified that he showed some nervousness, but nothing out of the ordinary for one being booked into a jail. These observations were corroborated by the testimony of Deputy Jailer James Sparks, who conducted the intake procedure.

Horn was escorted to his cell in the juvenile detention area at approximately 1:45 p.m. He was subsequently checked at 1:58 p.m. and 2:15 p.m., giving no indication on either occasion that he was upset. He was watching television and, on request, was given bed linens and a washcloth. At approximately 2:20 p.m., defendant County Jailer Ron Devere discovered Horn hanging from the bunk of his cell with a bed sheet tied around his neck. Devere took the weight off of Horn's neck and called for assistance. Seconds later, when Sparks responded and

arrived at the cell, he observed Devere laying Horn on the floor with a sheet tied around his neck. Sparks determined that Horn was not breathing, retrieved a CPR mouthpiece, and began cardio-pulmonary resuscitation. Horn started breathing on his own. Due to oxygen deprivation, Horn suffered brain damage and paralysis. He continues to be confined to a wheelchair.

In this action, defendant Devere is alleged to be liable because he is responsible as County Jailer for managing the detention center and for caring for and protecting all persons confined there. In addition, the Madison County Fiscal Court and all of its members are said to be liable. The Fiscal Court is responsible for the policies, practices and customs of the detention center, including the hiring, training, supervision and control of the jailer and his deputies.

II.

The district court dismissed plaintiff-appellant Horn's claim based on the Juvenile Justice Act, because it found the Act not enforceable by private cause of action under 42 U.S.C. § 1983. We review this conclusion of law *de novo. Waxman v. Luna,* 881 F.2d 237, 240 (6th Cir. 1989).

Section 1983 provides a cause of action for deprivation under color of state law, of any rights, privileges or immunities secured by the Constitution or laws of the United States. That is, violations of federal statutes, as well as constitutional violations, are actionable, but only if (1) the statute creates enforceable "rights , privileges or immunities," and (2) Congress has not foreclosed such

enforcement in the enactment itself. *Wilder v. Virginia Hospital Ass'n*, 496 U.S. 498, 508 (1990).

The Juvenile Justice Act is an exercise of congressional spending power. It was intended to improve the quality of juvenile justice in the United States. 42 U.S.C. § 5602(b). One of the specific stated purposes of the Act is "to assist State and local governments in removing juveniles from jails and lockups for adults." 42 U.S.C. § 5602(a)(8). The Act purports to serve this purpose by providing necessary resources to, inter alia, "increase the capacity of State and local governments and public and private agencies to conduct effective juvenile justice and delinquency prevention and rehabilitation programs." 42 U.S.C. § 5602(b)(4). Specifically, funds are provided to states which submit plans carrying out the Act's purposes and complying with numerous requirements prescribed at 42 U.S.C. § 5633(a). It is undisputed that the Commonwealth of Kentucky is a recipient of such funds.

Several of the requirements of § 5633(a) are arguably implicated by this action:[1]

> [A State's plan shall –]
>
> (12)(A) provide within three years after the submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult or offenses which do not constitute violations of valid court orders, or such nonoffenders

---

[1] While these provisions are not specifically named in the complaint, the appellate briefs imply they have been understood as forming the basis for Horn's claim under the Juvenile Justice Act. They are here quoted as they existed in May 1990.

as dependent or neglected children, shall not be placed in secure detention facilities or secure correctional facilities;

. . . .

(13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;

(14) provide that, beginning after the 5-year period following December 8, 1980, no juvenile shall be detained or confined in any jail or lockup for adults, except that the Administrator shall, through 1993, promulgate regulations which make exceptions with regard to the detention of juveniles accused of non-status offenses who are awaiting an initial court appearance pursuant to an enforceable State law requiring such appearances within twenty-four hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which –

(A) are outside a Standard Metropolitan Statistical Area,

(B) have no existing acceptable alternative placement available, and

(C) are in compliance with the provisions of paragraph (13);. . . .

Although the basis for appellant's claim has not been clearly articulated, review of the trial record reveals that it cannot have been legitimately based on either paragraph 12(A) or paragraph 13. That is, appellant was not a

status offender; he had been found delinquent by virtue of his guilty plea. Further, the evidence conclusively shows that during his brief stay at the detention center, appellant was completely segregated from adult offenders and detainees. Appellant's claim can only reasonably be deemed to be based on paragraph 14. Evidence was presented at trial indicating Horn was to be temporarily lodged at the detention center even though an "acceptable alternative placement" may have been available.

The first question posed is whether the alleged violation of this plan requirement is a deprivation of a "right, privilege or immunity." This inquiry turns on whether the requirement was intended to benefit appellant Horn. *Wilder, supra,* 496 U.S. at 509. If so, the provision creates a right enforceable under § 1983 unless it reflects merely a congressional preference rather than a binding obligation, or unless it is so vague and amorphous as to be beyond the competence of the judiciary to enforce. *Id.*

The requirement that juveniles not be detained in adult facilities unless no acceptable alternative is available is unquestionably intended to benefit juveniles like appellant. Further, the paragraph 14 requirement is defined with sufficient detail to be judicially enforceable. Whether paragraph 14 creates a "binding obligation" is a closer question.

In *Wilder,* 495 U.S. at 510-12, and more recently, in *Suter v. Artist M.,* 112 S.Ct. 1360, 1366-70 (1992), the Supreme Court recognized that conditions placed upon the disbursement of federal funds to a state may confer enforceable rights upon the intended beneficiaries of the

funding assistance. However, the conditions must be unambiguous, specific and mandatory. In *Suter,* the statutory requirement that the recipient state make "reasonable efforts" to prevent removal of neglected and abused children from their homes was held to create only a generalized duty, not enforceable in a private action under § 1983. In *Wilder,* by contrast, a statutory requirement that a state participating in the Medicaid program provide for payment to hospitals according to rates the state finds reasonable and adequate was deemed sufficiently definite and mandatory.

The provisions of the Juvenile Justice Act here at issue are more specific than those evaluated in either *Suter* or *Wilder.* Paragraphs 12(A), 13 and 14, read in conjunction, essentially require that states receiving federal funding (1) prohibit the detention of status offenders in secure facilities, (2) prohibit the detention of status offenders and juvenile delinquents in facilities where they would have regular contact with adult offenders, and (3) prohibit the detention of status offenders and juvenile delinquents in adult detention facilities, even for a period as short as 24 hours, unless no acceptable alternative placement is available. These requirements are definite and specific.

They are also mandatory. Section 5633(c) of the Act provides that a state's failure to comply with paragraphs (12)(A), (13) and/or (14) shall result in the termination of eligibility for funding or a substantial reduction in funding. This withholding of funding to states not in compliance is not precatory, but mandatory. It reflects not just a suggestion or "nudge," but congressional intent to impose a binding obligation. *Wilder,* 496 U.S. at 512.

We conclude, therefore, that the alleged violation of the Juvenile Justice Act constitutes the deprivation of a right, privilege or immunity. This deprivation is actionable under § 1983 unless Congress has expressly foreclosed such an enforcement action. We may not lightly conclude that Congress intended to preclude reliance on § 1983 as a remedy for the deprivation of a federally secured right. *Id.*, at 520 (quoting *Wright v. Roanoke Redevelopment & Housing Authority*, 479 U.S. 418, 423-24 (1987)). The burden is on appellees to show "by express provision or other specific evidence from the statute itself that Congress intended to foreclose such private enforcement." *Id.*, at 520-21 (quoting *Wright, supra*, 479 U.S. at 423).

Here, appellees have not carried their burden. They have not identified any provision foreclosing private enforcement. Nor have they argued that the Act creates a remedial scheme sufficiently comprehensive to imply congressional intent to preclude the § 1983 remedy. *See Wilder*, 496 U.S. at 521. In fact, the Act contains no provision for private judicial or administrative enforcement. That the Act gives the Administrator of the Office of Juvenile Justice and Delinquency Prevention the power to terminate or withhold funding does not manifest congressional intent to foreclose reliance on § 1983 to vindicate federal rights. See *Wilder*, 496 U.S. at 422; *Wright*, 479 U.S. at 428.

Having thus determined that the Act creates a federally secured right and that Congress has not foreclosed private enforcement, we hold that appellant was and is entitled to seek relief through a private cause of action under 42 U.S.C. § 1983. Although we are aware of no

circuit court decisions on this issue, our conclusion is consistent with the majority of district court decisions on point. See *James v. Jones,* 148 F.R.D. 196, 199-200 (W.D. Ky. 1993); *Grenier v. Kennebeck County, Maine,* 748 F. Supp. 908, 914-18 (D. Me. 1990); *Doe v. Borough of Clifton Heights,* 719 F. Supp. 382, 384 (E.D. Pa. 1989), *aff'd without opinion,* 902 F.2d 1559 (3rd Cir. 1990), *cert. denied* 498 U.S. 941 (1990); *Hendrickson v. Griggs,* 672 F. Supp. 1126, 1133-37 (N.D. Iowa 1987); *Kentucky Ass'n for Retarded Citizens v. Conn,* 510 F. Supp. 1233, 1246-50 (W.D. Ky. 1980) (recognizing the right *sub silentio*), *aff'd* 674 F.2d 582 (6th Cir. 1982), *cert. denied,* 459 U.S. 1041 (1982). Also, two recent unpublished decisions of district courts in the Sixth Circuit reached the same conclusion. *Doe v. Knauf,* slip op., no. 91-187 (E.D. Ky. Aug. 24, 1992); *James v. Wilkinson,* slip op., no. 89-139 (W.D. Ky. May 20, 1991).

Here, the district court reached a contrary result in a summary ruling based primarily on *Doe v. McFaul,* 599 F. Supp. 1421, 1430 (S.D. Ohio 1984). In *Doe v. McFaul,* the Juvenile Justice Act's purpose and history were found not to give rise to an implied right of action under the test of *Cort v. Ash,* 422 U.S. 66 (1975), or under § 1983. *Doe v. McFaul* was decided prior to the Supreme Court's instructive decisions in *Wright, Wilder* and *Suter.* While it may not necessarily have been erroneously decided then, the *Doe v. McFaul* ruling can no longer be viewed as reliable.

Accordingly, we conclude the district court erred when it summarily dismissed appellant's § 1983 claim based on the Juvenile Justice Act.

We also conclude, however, that the error was harmless. Even assuming appellant would have been able to

establish the Juvenile Justice Act was violated, the trial proofs clearly fail to demonstrate that such violation was a proximate cause of his injury.

In *Doe v. Sullivan County, Tennessee*, 956 F.2d 545, 550 (6th Cir. 1992), *cert. denied*, 113 S. Ct. 187 (1992), this Court held that proximate causation is an essential element of a § 1983 claim for damages. See also *Memphis Community School Dist. v. Stachura*, 477 U.S. 299, 305-308 (1986). That is, a violation of a federally secured right is remediable in damages only upon proof that the violation proximately caused injury.

We assume appellant would have been able to establish his temporary lodging in the Madison County Detention Center was technically violative of the Juvenile Justice Act because an acceptable alternative placement was available. However, the record is devoid of proof tending to show that the center's nature, being a secure adult facility as opposed to a secure juvenile facility, contributed in any way to appellant's suicide attempt or resultant injury. In fact, the record unequivocally demonstrates appellant was scrupulously shielded from the deleterious influences associated with adult facilities.

The Madison County Detention Center was brand new, approved for use as an intermittent juvenile holding facility. Appellant was received in an area specially designated and labeled "juvenile intake." He was accompanied and reassured during the intake procedure by his court designated worker. The intake procedure was sufficient to enable the attending officers to observe that appellant did not appear to be ill, upset, agitated, depressed, or

under the influence of alcohol or drugs. He was segregated from adult offenders and detainees by sight and sound. He was not placed in restraints of any kind. After being escorted to his cell, he was permitted to take a shower and watch television. He was thereafter monitored at intervals of approximately 15 minutes. When appellant was discovered hanging from his bunk, CPR was administered and he was resuscitated after the sheet was removed from his neck.

Appellant's claim that the technical violation of the Juvenile Justice Act caused his injury is not articulately asserted. The theory presumably is that if he had been placed in a secure juvenile facility, he would have been less likely to attempt suicide because (1) he might not have been as isolated, and (2) he would have been attended by officers better trained in the handling of juveniles. The theory is a matter of pure speculation, not supported by evidence of record. It amounts to nothing more than a hypothetical argument that his injury would not have occurred but for the violation of the Act. This argument, without more, is insufficient to sustain a compensable claim under § 1983. *Sullivan County, supra,* 956 F.2d at 550.

Viewing the evidence in the light most favorable to appellant, we find it clearly insufficient to raise an issue of material fact upon which reasonable minds could differ. Thus, even if appellant had been permitted to pursue this claim in trial, it would certainly have resulted in judgment for defendants as a matter of law under Fed. R. Civ. P. 50(a). See *id.*, at 549-50; *Lewis v. City of Irvine,* 899 F.2d 451, 454 (6th Cir. 1990). It follows that the district court's dismissal of the claim was harmless error.

III.

At the close of the proofs, the trial court granted defendants' motion under Fed R. Civ. P. 50(a) for judgment as a matter of law on plaintiff's Eighth Amendment claim. In reviewing the propriety of this decision, we apply the same standard as the trial court. *Lewis v. City of Irvine, supra,* 899 F.2d at 454.

> The standard to be applied in determining the propriety of a grant or denial of a directed verdict is whether the evidence is such, without weighing the credibility of the witnesses or considering the weight of the evidence, that there is substantial evidence from which the jury could find in favor of the party against whom the motion is made. In considering a motion for directed verdict the district court and this court must view the evidence in a light most favorable to the party against whom it is made. Only when it is clear that reasonable people could come to but one conclusion from the evidence should a court grant a motion for directed verdict.

Hill v. McIntyre, 884 F.2d 271, 274 (6th Cir. 1989).

Plaintiff alleged that defendants were deliberately indifferent to the special needs of juvenile detainees, in violation of the Eighth Amendment. Where prison officials are so deliberately indifferent to the serious medical needs of prisoners as to unnecessarily and wantonly inflict pain, they impose cruel and unusual punishment in violation of the Eighth Amendment. *Estell v. Gamble,* 429 U.S. 97, 104 (1976). Pretrial detainees are analogously protected from such mistreatment under the Due Process

Clause of the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 545 (1979); *Roberts v. City of Troy*, 773 F.2d 720, 723 (6th Cir. 1985).

A detaineee's psychological needs may constitute serious medical needs, especially when they result in suicidal tendencies. *Danese v. Asman*, 875 F.2d 1239, 1243-44 (6th Cir. 1989), *cert. denied*, 494 U.S. 1027 (1990); *Roberts, supra*, 773 F.2d at 724. See also *Bowen v. City of Manchester* 966 F.2d 13, 16 (1st Cir. 1992); *Simmons v. City of Philadelphia*, 947 F.2d 1042, 1068 (3rd Cir. 1991); *Buffington v. Baltimore County, Maryland*, 913 F.2d 113, 119-20 (4th Cir. 1990); *Partridge v. Two Unknown Police Officers*, 791 F.2d 1182, 1187 (5th Cir 1986); *Hall v. Ryan*, 957 F.2d 402, 406 (7th Cir. 1992).

Officials may be shown to be deliberately indifferent to such serious needs without evidence of conscious intent to inflict pain. *Molton v. City of Cleveland*, 839 F.2d 240, 243 (6th Cir. 1988). However, the conduct for which liability attaches must be more culpable than mere negligence; it must demonstrate deliberateness tantamount to intent to punish. *Id.; Roberts*, 773 F.2d at 724. Knowledge of the asserted serious needs or of circumstances clearly indicating the existence of such needs, is essential to a finding of deliberate indifference. *Danese, supra*, 875 F.2d at 1243-44. See also *Bowen v. City of Manchester, supra*, 966 F.2d 13, 17 (evidence must show the official had actual knowledge of, or was willfully blind to, the serious risk of suicide); *Colburn v. Upper Darby Tp.*, 946 F.2d 1017, 1024-25 (3rd Cir. 1991) (circumstances must be such that the official knew or should have known of the "particular vulnerability to suicide" or the "strong likelihood" that self-inflicted harm would occur).

Appellant concedes by his silence that none of the named defendants had actual or constructive knowledge of *his* suicidal propensity.[2] He argues, however, that as a juvenile, he is a member of a class of detainees who, because of their age, are more vulnerable to suicide than others and who are entitled to special care. He contends defendants should have ensured (1) that he was screened more carefully for suicidal tendencies during the intake procedure; (2) that jail personnel were better trained concerning the special needs of juveniles; and (3) that at least one staff member on each shift at the detention center had received CPR certification. Defendants' failure to take these precautions is said to constitute deliberate indifference.

Appellant cites no authority specifically supporting any of these theories. Neither does the trial record contain evidence that would conceivably warrant a verdict in his favor.

Appellant acknowledges that this Court has expressly declined to recognize the general right of a detainee to be screened correctly for suicidal tendencies. *Danese*, 875 F.2d at 1244. He argues nonetheless that such a right should be recognized for juvenile detainees in

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[2] Court designated worker Haynes had been informed by appellant's parents that he had attempted suicide early in May 1990 by taking some pills, but avoided harm by self-inducing vomiting. There is also controverted evidence that Mrs. Horn had told Haynes that appellant had on May 31st threatened to commit suicide if he were placed in jail. Neither circumstance was communicated to any of the defendants on trial.

adult facilities. He asks the Court to recognize that juvenile detainees are particularly vulnerable to suicide and that defendants should have known this. Their failure to screen him more thoroughly is said to constitute deliberate indifference.

In *Simmons v. City of Philadelphia, supra,* the Third Circuit reversed a directed verdict, finding sufficient evidence had been presented to conceivably warrant a finding that intoxicated detainees are particularly vulnerable to suicide and that failure to take certain precautionary measures could be found to be deliberately indifferent. 947 F.2d at 1068-74. Comparison of the evidence presented in *Simmons* with the present trial record reveals marked differences. Although Joseph Rowan testified as an expert in both cases, the present record does not contain statistical evidence concerning suicide frequency among juvenile detainees of the sort presented in *Simmons.* Rowan testified that juveniles tend to be more impulsive than adults and tend to react more strongly to isolation. Such testimony hardly creates an inference that there was "a substantial likelihood, rather than a mere possibility," that appellant would try to harm himself. See *Schmelz v. Monroe County,* 954 F.2d 1540, 1545 (11th Cir. 1992); *Colburn v. Upper Darby Tp., supra,* 946 F.2d at 1024. Rowan also testified that "unusual or severe agitation" is a significant indicator of suicidal propensity among youths, a condition which appellant indisputably did not display in this case. In further contrast to *Simmons,* 947 F.2d at 1066, 1071, the present record does not contain evidence that defendants knew of the frequency of juvenile detainee suicides and deliberately chose not to employ reasonably preventive measures. Finally, there is

absolutely no showing that use of a more extensive screening procedure would have prevented appellant's suicide attempt. Accordingly, based on the present record, we decline to recognize that juvenile detainees are, as a class, particularly vulnerable to suicide and entitled to special screening for suicidal tendencies.

Appellant's latter two theories also fail. While Jailer Devere and his deputies should ideally have been better trained in the treatment of juvenile detainees, the facts of this case demonstrate only that appellant was treated fairly and professionally and was monitored relatively closely. Any shortfall in their training can, at worst, be characterized as mere negligence, not deliberate indifference, and was not a proximate cause of appellant's injury. The failure to ensure that a member of each shift was CPR-certified was also an inconsequential technical defect. It appears Deputy Sparks had received CPR training, performed CPR promptly, and succeeded in resuscitating appellant.

The trial did not err in awarding judgment as a matter of law to defendants on the claim that they were deliberately indifferent to plaintiff's serious medical needs.

IV.

Appellant contends the district court erred by prohibiting all reference to the Juvenile Justice Act requirements during trial. The district court essentially ruled that the Act's requirements were not relevant after dismissal of the claim that was based on those requirements.

Appellant insists the requirements were relevant to establish that Ron Devere was deliberately indifferent to his federally secured rights.

Having already concluded the district court should have allowed appellant to take his Juvenile Justice Act claim to trial, we can hardly rule that exclusion of evidence of the Act's requirements was not erroneous. The real question posed is whether such error prejudiced a substantial right. *Kelly's Auto Parts, No. 1, Inc. v. Boughton,* 809 F.2d 1247, 1255 (6th Cir. 1987). Unless appellant's substantial rights were adversely affected by the erroneous exclusion, the error will be deemed harmless. *Id.* In view of our foregoing discussion regarding the substantial deficiencies in appellant's deliberate indifference case, we are convinced that exclusion of the Juveniie Justice Act standards worked no substantial prejudice and was legally harmless.

V.

Finally, appellant contends the trial court erred when it denied his motion for judgment as a matter of law. He argues it is unconstitutional per se to lodge a juvenile in an adult facility, citing *Cox v. Turley,* 506 F.2d 1347 (6th Cir. 1974), and *D.B. v. Tewksberry,* 545 F. Supp. 896 (D. Oregon 1982). Neither case supports the asserted proposition. Both indicate that under some circumstances, the detention of a juvenile in an adult facility may be unconstitutional. As fully discussed above, such unconstitutional circumstances are not presented in this case. Denial of plaintiff's motion for judgment as a matter of law was proper.

VI.

For the foregoing reasons, the orders of the district court are **AFFIRMED** in part and **REVERSED** in part. The order dismissing plaintiff's claim based on the Juvenile Justice Act is **REVERSED.** We hold the Act is enforceable through a private cause of action under 42 U.S.C. § 1983. However, because we find the district court's error was ultimately harmless, the final judgment is **AFFIRMED.**